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LAW OFFICES OF CHRISTOPHER L. MAKAY
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San Antonio, TX 78205

EXAMINER

VALENTI, ANDREA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3643 | |

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,702

Applicant(s)

HARTSELL, CLIFF

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 39-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of group I, claims 1-38 in the reply filed on 03 December 2004 is acknowledged.

Oath/Declaration/Priority

Applicant has claimed priority to provisional application 10/606,007. However, this application is a utility application and is not a provisional application. It is recommended that applicant may want to claim priority to application 10/738,236 as a continuation-in-part.

Specification

The disclosure is objected to because of the following informalities:

Page 1, first paragraph, reference is made to application 10/606,007 as a provisional application, but this application is not a provisional application.

Page 11, first line, "living canopy 161" appears to be that it should read --living canopy 151--

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 24-38 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/738,236. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim a fowl feeding device comprising a product tube, dispensing cap, dish, a shroud, a shield, a landing, and a hanger support.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-13, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15 February 2005] 8 pages.

Regarding Claim 1, Woodland Fish and Wildlife teaches a protective structure (Woodland page 3 Roosts), where in a fowl uses the protective structure as a sanctuary

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and as a shelter; a habitat strip (Woodland page 2 Food and Cover) disposed near the protective structure, wherein the fowl uses the habitat strip for nesting; and a station comprising a water supply (Woodland page 3, first column, second paragraph), wherein the fowl establish a territory around the water supply, and utilize the protective structure and habitat strip such that they do not migrate to another location.

Regarding Claim 2, Woodland Fish and Wildlife teach the food items from the habitat strip are the primary source of food for the fowl (Woodland page 2 Food and Cover).

Regarding Claim 3, Woodland Fish and Wildlife teach the fowl also utilize the habitat strip for cover (Woodland page 2 Food and Cover).

Regarding Claim 4, Woodland Fish and Wildlife teach the protective structure comprises a rigid structure to withstand the perusal of a larger animal (Woodland page 3 Roost).

Regarding Claim 5, Woodland Fish and Wildlife teach the protective structure further comprises a raised floor suitable for use by the fowl (Woodland page 3 Roost Figs).

Regarding Claim 6, Woodland Fish and Wildlife teach the protective structure further comprises a cover to provide security to the fowl (Woodland page 3, third column, first paragraph).

Regarding Claim 8, Woodland Fish and Wildlife teach the cover is a natural vegetative cover (Woodland page 3, third column, first paragraph).

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Regarding Claim 9, Woodland Fish and Wildlife teach the cover is of a man-made material (Woodland Roost Figs. page 3).

Regarding Claim 10, Woodland Fish and Wildlife teach the habitat strip is a plowed and planted portion of earth (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 11, Woodland Fish and Wildlife teach the habitat strip is planted with native grasses (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 12, Woodland Fish and Wildlife inherently teach the native grasses produce seeds at varying times of the year such that there is always a supply of food for the fowl (Woodland page 4, first column, Food section and page 2, section Food and Cover, first paragraph).

Regarding Claim 13, Woodland Fish and Wildlife teach a water supply and the station includes a barrier assembly to keep large animals away from the water supply (Woodland page 3, first column, line 6).

Regarding Claim 17, Woodland Fish and Wildlife teach the water supply is housed within the barrier assembly (Woodland page 3, first column, line 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 5,924,380 to Rayborn.

Regarding Claim 7, Woodland Fish and Wildlife teach the protective structure, but are silent on it further comprises a door of a size suitable for raking out the protective structure. However, Rayborn teaches a protective fowl structure with a door (Rayborn Fig. 1 #19). It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland with the teachings of Rayborn for ergonomic access to the structure for routine maintenance and to access and injured bird without disrupting the entire structure.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages.

Regarding Claim 14, Woodland Fish and Wildlife is silent on a door panel utilized by an operator during setup and maintenance. However, it is old and notoriously well-known to provide doors, portals, hatches, etc for ergonomic ease of access to an enclosed area for routine maintenance or for refilling the supply if necessary or for adding supplemental nutrients to the supply. This limitation does not present a patentably distinct limitation.

Regarding Claim 15, Woodland Fish and Wildlife inherently teaches the barrier assembly permits entry of fowl there through and restricts entry of larger animals (Woodland page 3, first column).

Claims 16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,982,702 to Copps.

Regarding Claim 16, Woodland Fish and Wildlife is silent on the barrier assembly further comprises a roof panel to protect components located within the barrier assembly. However, Copps teaches a barrier that has a roof and sides that only permits access to the fowl (Copps Fig. 1 and abstract). It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland with the teachings of Copps since the modification is merely complete enclosure of the water supply, the enclosure performing the same intended function of permitting access just to the fowl and modified merely for the advantage of enhanced protection of the fowl and also protection to the water supply from vandalism.

Regarding Claim 18, Woodland Fish and Wildlife as modified teach the water supply is housed beneath the roof panel for protection from the elements (Copps Fig. 1).

Regarding Claim 19, Woodland Fish and Wildlife as modified teaches the water supply comprises: a trough (Copps #24); a storage tank containing a water (Copps

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#20); and a float valve (Copps #30) disposed on the trough and in fluid communication with the storage tank, wherein water disposed in the storage tank flows through the float valve to the trough when the water level in the trough is below the desired level, and further wherein the water does not flow through the float valve when the water level in the trough is at or above the desired level, thereby continuously maintaining the water level in the trough.

Regarding Claim 20, Woodland Fish and Wildlife as modified teaches a stand (Copps #18) to support the storage tank and keep the tank elevated above the trough.

Regarding Claim 21, Woodland Fish and Wildlife as modified teaches the trough further comprises a ramp (Woodland page 3, first column, second paragraph) disposed in the trough, wherein the fowl that fall into the water exit the water by walking up the ramp.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,982,702 to Copps as applied to claim 1, 19, and 20 above, and further in view of U.S. Patent No. 2,618,237 to McDermott et al.

Regarding Claim 22, Woodland Fish and Wildlife as modified is silent on the trough assembly is cantilevered off the front end of the stand assembly such that insects cannot climb to the water in the trough. However, McDermott teaches a

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cantilevered fowl water trough (McDermott Fig. 5). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of McDermott at the time of the invention since the modification is merely the shifting location of a known element performing the same intended function, modified for the advantage of making the device easily portable to one area of the habitat to another.

Claims 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,628,865 to Lehmann.

Regarding Claim 23, Woodland Fish and Wildlife teaches the importance of feed all year round and means of providing feed, but is silent on the station further includes a fowl feeding device. However, Lehmann teaches a fowl feeding device. It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland with the teachings of Lehmann for the advantage of keeping rodents out of the fowl feed as taught by Lehmann (Lehmann abstract).

Regarding Claim 24, Woodland Fish and Wildlife as modified teaches the fowl feeding device comprises: a product tube (Lehmann #11), wherein the product tube accepts a food product at a first end; a dispense cap (Lehmann #17) coupled to a second end of the product tube, the dispense cap including dispense apertures (Lehmann #15), wherein the food product stored in the product tube is available through the dispense apertures; and a dish (Lehmann #14a) coupled to the dispense cap,

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wherein food product exiting the dispense apertures and not consumed collects in the dish.

Regarding Claim 25, Woodland Fish and Wildlife teaches the food product that collects in the dish is available to the fowl for consumption (Lehmann abstract).

Regarding Claim 26, Woodland Fish and Wildlife as modified teaches the food product must be pecked out of the dispense apertures by the fowl (Lehmann Fig. 3 #10).

Regarding Claim 27, Woodland Fish and Wildlife as modified teaches a cap (Lehmann #12) coupled to the first end of the product tube to protect the food product from the environment.

Regarding Claim 28, Woodland Fish and Wildlife as modified teaches the cap is removable, thereby providing the ability to refill the product tube (Lehmann #12 and Col. 2 line 28-29).

Regarding Claim 29, Woodland Fish and Wildlife as modified teaches a shroud disposed on the product tube and above the dish to prevent water from falling into the dish (Lehmann #24).

Claim 32 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,628,865 to Lehmann as applied

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to claims 1, 23, and 24 above, and further in view of U.S. Patent No. 3,717,126 to Falcone et al.

Regarding Claim 32, Woodland Fish and Wildlife as modified is silent on the dish includes drain holes to prevent liquids from accumulating in the dish. However, Falcone teaches a feeder with drain holes (Falcone Fig. 1 and 6 #78). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Falcone at the time of the invention to remove undesirable moisture from the feed to prevent the feed from clumping.

Regarding Claim 31, Woodland Fish and Wildlife as modified teaches a landing disposed beneath the dish for use by the fowl in approaching the feeding device (Falcone #80).

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,628,865 to Lehmann as applied to claims 1, 23, and 24 above, and further in view of U.S. Patent No. 6,318,290 to Fisher.

Regarding Claim 30, Woodland Fish and Wildlife as modified is silent on a shield, wherein the shield lines the dispense apertures, thereby preventing small animals from enlarging the dispense apertures and removing excess amounts of the food product. However, Fisher teaches a shield on a bird feeder aperture (Fisher #88). It would have

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been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Fisher at the time of the invention to prevent squirrel access to the feed as taught by Fisher (Fisher Col. 6 line 25-45).

Claim 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 4,628,865 to Lehmann as applied to claims 1, 23, and 24 above, and further in view of U.S. Patent No. 3,901,192 to Adams.

Regarding Claim 33, Woodland Fish and Wildlife as modified is silent on a hanger support used to suspend and stabilize the fowl feeding device within the barrier assembly. However, Adams teaches a hanging support for a fowl feeding device (Adams #38 and 40). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Adams at the time of the invention if the ground is too soft to securely anchor it with a stake as taught by Lehmann. The modification is merely the selection of an old and notoriously well-known means of alternate support selected based on the soil conditions in the area of application.

Regarding Claim 34, Woodland as modified teaches the suspension height of the fowl feeding device is adjustable to accommodate non matured fowl (Adams tip of 40 can be located at any height).

Regarding Claim 35, Woodland Fish and Wildlife as modified teaches the hanger support comprises a hanger (Fisher #38 and 40) that is adjustable.

Regarding Claim 36, Woodland Fish and Wildlife as modified teaches the hanger support comprises a downturn segment (Fisher #38) for rotational stability.

Regarding Claim 37, Woodland Fish and Wildlife as modified teaches the hanger support comprises tube stabilizers (Fisher #42) to prevent movement of the feeding device along the hanger support.

Regarding Claim 38, Woodland Fish and Wildlife as modified inherently teaches the suspension of the fowl feeding device prevents insects from accessing the feeding device and any stored product.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 1,975,866; U.S. Patent No. 3,902,460; U.S. Patent No. 2,804,843; U.S. Patent Pub. No. US 2004/0221817; U.S. Patent No. 3,017,858; German Patent DE 4114415 A1.

Bobwhite Quail Management,
<http://www.pointingdogs.com/LM/Quail+Management.htm>, 24 December 2002 [retrieved from internet 15 February 2005]. 5 pages.

Management for Bobwhite Quail, By Charles W. Ramsey, Extension Wildlife Specialist, The Texas A&M University System,
<http://wildlife.tamu.edu/publications/A071.pdf>, 22 December 2003 [retrieved from internet 15 February 2005] 4 pages.

Walnut Creek Open Space Foundation, Quail Habitat Project,
http://www.wcosf.org/activities/quail_habitat.shtml, 17 December 2003 [retrieved from internet 15 February 2005] 4 pages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

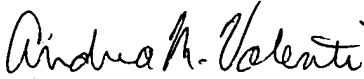
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Andrea M. Valenti
Patent Examiner
Art Unit 3643

16 February 2005